U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[redacted]

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FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: DEC 22 2005

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IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. At the time he filed the petition, the petitioner was a research associate at the [redacted]. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now Citizenship and Immigration Services (CIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The petitioner describes his work:

> My research life began in 1985 when I enrolled in Xian Medical University as a postgraduate student. I have been in the academic field for 17 years. During my research career in China, I published 20 scientific papers.
>
> My present research includes two projects. One of the projects is the regulation of T-cell growth and function. T-cells are important immune cells and play a critical role in many diseases, especially cancer and allergic diseases (including asthma). The purpose of this project is to elucidate the mechanism controlling T-cell growth and function. I am a key investigator in this project. I use the Tet-on system to establish Jurkat Tet-on cell line and perform my research. . . . My research found that $P57^{kip2}$ is one of the important Proteins which controls T-cell growth and function. Our results have provided fundamental evidence which will lead to the further understanding of T-cell growth and function. . . .
>
> The other project I am involved in is the signal transduction of mast cells. Mast cells play an important role in the development of asthma. . . . The purpose of this project is to further understand the process of mast cell transduction and develop new medicines for asthma and other allergic disease and to discover means of administering gene therapy. In this project we employ cutting-edge techniques such as siRNA to perform experiments. My initial results showed that CsA (immunosuppressant) can inhibit PKC activity by reducing the intracellular Ca^{2+} level.

Three witness letters accompany the initial filing of the petition. [redacted] chairman of the Department of Pediatrics at NJMRC and a professor at the University of Colorado, states:

> In view of his unique experiences and extraordinary skills as a researcher, [the petitioner] is critically important to the success of our ongoing research projects. He will certainly contribute to a greater extent than any other U.S. worker with minimum qualifications. . . .
>
> He has designed and initiated a number of experiments furthering our understanding of the molecular mechanisms of T-cell growth and function. Abnormal control of T-cell growth, for example, results in childhood and adult forms of leukemia. We know that T cells are important immune cells and play a critical role in many diseases. . . . His research results have provided novel and fundamental contributions to our understanding of the mechanisms controlling T-cell growth and function. . . .
>
> Another of [the petitioner's] projects involves definition of the regulatory signal transduction pathways in mast cells. Allergic diseases affect about 20% of the population. Mast cells are the primary effectors of immediate type allergic reactions and play a role in sustaining allergic inflammation, including asthma. The targeting of mast cells or mast cell-derived mediators is an important aspect of therapy. Binding of IgE to high affinity receptors on the mast cell surface initiates signal transduction cascades that control degranulation and cytokine gene transcription which result in allergic inflammation. Though many efforts have been made to elucidate these mechanisms, detailed descriptions are still lacking. [The petitioner] has systematically been dissecting and analyzing these pathways, revealing new therapeutic possibilities. . . .
>
> [The petitioner's] multidisciplinary expertise and skills in these areas make him uniquely qualified to conduct the complex, highly specialized research required in these projects. It would be virtually impossible to replace him with other than a group of scientists. . . .
>
> He is indispensable to the success of our research project.

[redacted] now an assistant professor at Baylor College of Medicine, held a similar position at NJMRC from 1998 to 2000. [redacted] tates:

> [The petitioner] worked in my laboratory for only 6 months from June to November in 2000 because [of] my relocation to Baylor College of Medicine at the end of that year. . . . Although the time [the petitioner] spent in my lab was brief, I was impressed by his intellectual ability and strong technical skills. He was given the project to study the cell cycle regulation during the formation of skeletal muscles. . . . In a short period of time, he was able to produce high quality data which contributed significantly to the overall research conducted in my lab.

[redacted], like [redacted] is a professor at [redacted] and at the University of Colorado. Dr. [redacted] is also the president of the American Academy of Allergy, Asthma and Immunology. Dr. [redacted] states:

> I am quite familiar with [the petitioner's] research. He is working on the mechanism of signal transduction of mast cells. . . . [The petitioner's] recent experiments involve trying to elucidate this mechanism. His experiments found that FcεR1 crosslinking can activate PKC activity and that cyclosporin A can inhibit PKC activity by reducing intracellular Ca^{2+} concentration. . . . These findings are critically important to prevent and treat asthma and other allergic diseases, also to discover new drugs for treatment of these diseases. . . .
>
> The initial achievement [the petitioner] has made itself set him apart. Because of the importance and emergency of the work, it is critical that [the petitioner] continue his research uninterrupted. If he were required to obtain a labor certification that would require him to cease his work for even a short period [of] time, much this work would be lost, as no one in this field has the expertise to complete these studies.

The petitioner submits copies of his published articles, but no independent evidence to establish that these articles have had a particularly substantial impact in comparison to the many other articles published in the petitioner's specialty. On December 20, 2004, the director instructed the petitioner to "[s]ubmit any evidence that your published works have been cited by others." The director also requested, more generally, further evidence to establish the petitioner's eligibility for the waiver. In response, the petitioner states:

> Because my work was published in the Journal of Immunology only last August . . . , I have not yet seen my work cited by others (it usually takes a longer period before a paper is cited). However, my work has already caused interest [among] other researchers. Here I attached four emails which inquired about my methods and related materials.

The article to which the beneficiary refers was submitted for publication on September 29, 2003. The petition was filed on September 12, 2003, several weeks before the submission of the article. The director, in the request for evidence, did not single out this particular article. Rather, the director referred broadly and generally to the beneficiary's "published works," including the "20 scientific papers" that the petitioner himself discussed in his own introductory letter. Many of these papers had been published several years earlier, in the mid-1990s. The recent publication of the petitioner's newest article has no retroactive effect on the citation history of articles that are six or more years older. We note that the petitioner's publications prior to his arrival in the United States were in the field of analytical toxicology. He does not appear to have done any work related to mast cells, his current focus, prior to his present research appointment at [redacted]

With regard to the "four emails which inquired about [the petitioner's] methods and related materials," the messages are all addressed to [redacted] forwarded some of these messages to the petitioner, but he forwarded one of the messages to one [redacted] who in turn forwarded the message to the petitioner. The messages do not comment on the impact or significance of the petitioner's research; instead, they present technical questions, such as: "Which [p57 antibody] did you use in your recent paper?" The

petitioner has not shown that such communications from one research group to another are at all unusual in the field. The quoted example indicates only that the petitioner's paper was not specific enough in identifying materials used in the experiments in question. Other correspondents request samples for use in their own research.

Three new letters accompany the petitioner's response to the director's notice. [redacted] describes the petitioner's work at [redacted] and states that if the petitioner "is unable to continue this research, I am concerned that our studies may come to a halt and this will be contrary to the national interest." We shall address, elsewhere in this decision, the assertion that it is in the national interest for the petitioner to remain at [redacted] without interruption.

As noted above, [redacted] has repeatedly argued that the petitioner should receive a national interest waiver for the specific reason that his continued presence is urgently required at [redacted] CIS records show that another entity has subsequently filed a nonimmigrant visa petition on the alien's behalf. The petitioner is now a research fellow at the University of Texas Health Science Center, San Antonio. All arguments to the effect that it is in the national interest for the beneficiary to remain at [redacted] are now moot, owing to the petitioner's departure from that facility. Considering that the petitioner's waiver request rests more or less entirely on his work at [redacted] this is not an insignificant point.

The remaining two letters are from researchers who state that they have never met the petitioner, and who offer comments on the significance of the petitioner's 2004 article in the *Journal of Immunology*. [redacted] Singh, research advisor and group leader at [redacted] and Company, states: "By delineating the role of p57 Kip2 in cell growth regulation, [the petitioner's] research has provided evidence for the first time for its potential implications in human diseases, including cancer and heart disease." [redacted] an assistant professor at Mount Sinai School of Medicine, states that the petitioner's article "provides fundamental discoveries to understand the mechanism of controlling T cell growth and function regulated by $p57^{kip2}$ and will have great impact on future research of $p57^{kip2}$ in T cells."

The director denied the petition, stating that "the record contains minimal evidence that the petitioner's overall impact has exceed[ed] that of others in the same research specialty. . . . The record does not include any evidence that the petitioner's work has been cited in others' publications." The director noted that the letters from independent witnesses concern an article that was not published until well after the petition's filing date. Pursuant to *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971), the beneficiary of an employment-based immigrant visa petition must be eligible as of the filing date.

On appeal, the petitioner submits copies of previously submitted materials, as well as new documentation. The petitioner submits a fifth email message, once again addressed to [redacted] in which a researcher in Canada requests specimens from a cell line that the petitioner helped to develop. As noted above, the petitioner offers no objective means to determine that such requests are evidence the particular significance of a researcher's work, rather than more or less routine requests for desired materials.

The petitioner submits Chinese-language printouts which, the petitioner claims, demonstrate that five of his Chinese papers were each cited between two and five times (on average, less than three times). At least two

of these citations are self-citations by the petitioner and/or his co-authors. Two subsequent English-language articles have been cited once and twice, respectively. Thus, the petitioner has documented 15 independent citations of seven articles, averaging just over two citations per article. We cannot find that this minimal level of citation demonstrates that the petitioner has influenced his field to an extent that would warrant the special benefit of a national interest waiver, above and beyond classification as a member of the professions holding an advanced degree.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.